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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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In the Matter of Petition of Bell Atlantic Telephone Companies for Forbearance from Regulation as Dominant Carriers in Delaware; Maryland; Massachusetts; New Hampshire; New Jersey; New York; Pennsylvania; Rhode Island; Washington, D.C.; Vermont; and Virginia.	)	CC Docket No. 99-124

PETITION OF BELL ATLANTIC FOR FORBEARANCE

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PETITION OF BELL ATLANTIC[1] FOR FORBEARANCE

Bell Atlantic hereby respectfully petitions the Commission to forbear under Section 10 of the 1996 Act from rate regulating its special access services in the twelve state jurisdictions identified in the caption.

The special access services at issue here are a clear case where forbearance is warranted. In each of the jurisdictions that is the subject of this petition, competitors already are providing competing services, and have facilities in place that allow them to reach customers who account for approximately *90 percent* of the special access services that Bell Atlantic still provides. What's more, these are not merely theoretical alternatives, as demonstrated by the fact that competitors already provide approximately

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1 The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

30 percent of the high capacity special access services in these jurisdictions, and up to 50 percent in key business centers. And the small number of major customers who account for the vast majority of special access demand possess enormous purchasing power by virtue of their ability to switch to competing alternatives or to supply the services themselves -- either directly, or in the case of the Big Three long distance carriers both directly and through the ever growing list of competing providers that they have acquired or entered into alliances with.

Under circumstances such as these, customers clearly have competitive alternatives to Bell Atlantic's service, and continued rate regulation is not "necessary" to protect consumers. On the contrary, rate regulation in this market affirmatively harms special access customers by discouraging vigorous price competition and by preventing customers from selecting the carrier best able to meet their needs. As a result, forbearance is warranted to provide customers with the benefit of full and unfettered price competition.

The specific relief requested in this petition includes forbearance from the rate structure rules in Part 69 and the rate level rules in Part 61 for Bell Atlantic's special access services throughout these 12 state jurisdictions.[2] The Commission also should forbear from applying its tariff filing rules so that Bell Atlantic can file tariffs for special

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[2] The jurisdictions covered by the Bell Atlantic petition are Delaware; Maryland; Massachusetts; New Hampshire; New Jersey; New York (including the Greenwich, Connecticut service area); Pennsylvania; Rhode Island; Washington, D.C.; Vermont; and Virginia.

access services on one-day's notice, without cost support or other supporting documentation, just as competing providers already can do.[3]

I. Background

Congress enacted the Telecommunications Act of 1996 to replace the pre-existing regulatory regime with "a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans." Joint Explanatory Statement, p. 113. The Act is pro-competitive, because it seeks to open all telecommunications markets to competition. It is de-regulatory, because it is designed to eliminate regulation as markets become competitive and no longer need regulatory supervision.

Section 10 is a key part of this de-regulatory scheme. It requires the Commission to forbear from applying any regulation or any provision of the Act, to any telecommunications carrier or telecommunications service, in any or some of a carrier's geographic markets, if such regulation is no longer necessary and forbearance is

[3] Because Bell Atlantic does not request classification as a nondominant carrier in this petition, Bell Atlantic does not here request either mandatory or permissive detariffing of its special access services. ***See*** Policy and Rules Concerning the Interstate, Interexchange Marketplace, 11 FCC Rcd 20730 (1996) ("IXC Forbearance Order").

consistent with the public interest. 47 U.S.C. § 160(a).[4] In making its public interest determination, Section 10 requires the Commission to consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. 47 U.S.C. § 160(b).

II. The Commission Should Forbear From Regulation Of Bell Atlantic's Rates For Special Access Services.

The market for special access services in the jurisdictions included in this petition meets the Section 10 standard for forbearance from rate regulation. This market has long since passed the point where it needs regulatory price controls to keep rates reasonable or to protect consumers. In fact, such controls harm consumers by inhibiting price competition and by discouraging the introduction of new, innovative services. As the Chairman recently explained, when customers have a "meaningful choice of service options," "the Commission must deregulate these services." Letter from Chairman William E. Kennard, to Hon. Tom Bliley at 20 (Dec. 7, 1998) (emphasis added).

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4 The Commission "shall forbear from applying any regulation" if

(1) enforcement is "not necessary" to ensure that the charges or practices "are just and reasonable and are not unjustly or unreasonably discriminatory;" and
(2) "enforcement of such regulation or provision is not necessary for the protection of consumers; and
(3) forbearance from applying such provision or regulation is consistent with the public interest."

A. Enforcement Of Rate Regulation Is Not Necessary To Ensure That Rates And Practices Are Just And Reasonable And Not Unjustly Or Unreasonably Discriminatory.

The first issue under Section 10 is whether regulation of Bell Atlantic's special access rates is necessary to ensure that they are just, reasonable, and not unreasonably discriminatory. 47 U.S.C. § 160(a)(1). The answer is no. The Commission has repeatedly recognized that price regulation is not necessary if carriers do not possess market power. ***See*** IXC Forbearance Order, ¶ 36 (1996) ("it is highly unlikely that . . . carriers that lack market power could successfully charge rates, or impose terms and conditions, for [the relevant] services that violate Sections 201 and 202 of the Communications Act"). As is shown in Attachment C (Affidavit of Dr. Karl McDermott and Dr. William E. Taylor, which provides an economic analysis of the market) Bell Atlantic does not have market power in special access services. Therefore, rate regulation is not necessary to ensure that Bell Atlantic's rates are just and reasonable and not unjustly discriminatory.

Bell Atlantic lacks market power because the vast majority – *approximately 90 percent* -- of its special access customers have a competitive alternative available through an array of competitive facilities.

Competitors have an established presence in every major market covered by this petition, and can provide service to Bell Atlantic's special access customers either by connecting the customers directly to their competing networks or by providing service through their collocation arrangements. ***See*** Demonstration of Competition, attached to Affidavit of Robert J. McDonnell ("Attachment A"). These competitors have installed over 725,000 miles of fiber in the states covered by this petition. In addition, competitors use collocated facilities in Bell Atlantic central offices to provide competitive special access from the central office to a long distance point of presence, even when the competitors do not have facilities connecting to an individual customer. Competitors have connected their networks to approximately 370 of Bell Atlantic's wire centers through over 900 collocation arrangements. *See* Demonstration of Competition at 2. These networks also are connected to the points-of-presence of interexchange carrier, and to hundreds of office buildings in each market. Connecting these networks to additional buildings is both technically feasible and economically justifiable where sufficient demand has been established. In fact, the approximate cost to expand 2000 feet in an urban area (where special access demand is concentrated) is only $6,200. ***See*** Affidavit of Michael R. McCullough, ¶ 16 (Attachment B). Customers also may choose from microwave and satellite carriers, as well as the private line networks of the facilities-based interexchange carriers. Finally, many customers self-supply through their own microwave equipment or facilities they install through their own rights of way. ***See*** Attachment B, ¶ 21.

Taken all together, competitors with collocation or their own fiber can reach between 82 and 100% of the Bell Atlantic special access demand in the states covered by this petition.[5]

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[5] This ability for a competitor to reach current customers is sometimes called "addressibility. The state by state addressibility levels are: Washington D.C., 100%; Delaware, 97%; Vermont 97%; New York 93%; Massachusetts, 92%; New Jersey, 91%; New Hampshire, 88%; Pennsylvania, 88%; Maryland, 84%; Virginia 82%; and Rhode Island 82%. ***See*** Attachment A, Demonstration of Competition.

These competitive alternatives are not just theoretical, as demonstrated by the fact that competitors are actively operating and winning customers. In fact, by the beginning of 1998, competitors already had won over 30% of the high capacity special access business, and as much as 50% in key business centers. See Attachment C, ¶ 36 (citing a report by Quality Strategies Inc.).

The power of these competitors readily to impact the market is enhanced by the purchasing power of special access customers. Special access services are used primarily by two groups of customers – interexchange carriers and business customers. ***See*** Attachment C, ¶ 13. Both groups are sophisticated customers with a great deal of purchasing power.

The interexchange carriers exhibit a great deal of pricing elasticity, due to their large volumes, the high concentrations of traffic to a limited number of points of presence, and the concentration of demand among a small handful of facilities-based carriers (primarily AT&T, MCI/Worldcom, and Sprint). ***See*** Attachment C, ¶ 31. In fact, the three largest carriers purchase more than half of Bell Atlantic's special access services. This makes Bell Atlantic special access particularly vulnerable to competition as these carriers, which compete with Bell Atlantic across a wide range of services, are moving their business to competitive alternatives. For example, AT&T has committed to move its special access demand to competing access providers. ***See*** AT&T News Release, "AT&T, Five Companies Sign Alternative Access Agreements," (Apr. 4, 1996) ("AT&T will "continue to pursue arrangements with [companies other than incumbent local exchange carriers] that provide access to customers"). More importantly, both

AT&T and MCI/WorldCom have purchased the largest providers of competitive special access themselves. "Analysts expect WorldCom—through its previous acquisitions of MFS and Brooks Fiber—to provide MCI with more than 70 percent of its access capacity, and AT&T, through its purchase of TCG, is expected to avoid a significant portion of ILEC access services." Attachment C at ¶ 31 (citing reports by Salomon Smith Barney and Prudential Securities). AT&T has also agreed to purchase the largest cable TV provider in the country and is working deals with other major providers that could allow it to use the national network of cable facilities to offer local and access services that completely bypass the incumbent local exchange's network.

Other competitors have long targeted the interexchange carrier market, initially constructing facilities to connect interexchange carrier points of presence, and then connecting those points of presence to Bell Atlantic's serving wire centers through collocation. They have been able to offer contract prices and customized networks in response to interexchange carrier requests for proposals that often encompassed an interexchange carrier's needs throughout a LATA or metropolitan area. Interexchange carriers have shifted large amounts of their traffic to competitive access providers for strategic reasons, such as the desire to improve their negotiating leverage by having more than one supplier of exchange access services, or simply to shift traffic away from Bell Atlantic, which they see as an actual or potential competitor.

Business customers use high capacity services to transmit large volumes of voice and data traffic among multiple end user locations and between those locations and the points of presence of interexchange carriers. Their volume purchasing power and their sophisticated knowledge of the telecommunications market enable them to drive hard bargains by issuing requests for proposals to a variety of suppliers, including Bell Atlantic, competitive access providers, interexchange carriers, and resellers. They expect, and obtain, bids that offer customized networks and individually-negotiated rates, and they readily switch carriers to take advantage of the best offer.

This combination of supply and demand elasticity prevents Bell Atlantic from exercising market power anywhere in the jurisdictions covered by the petition. Special access demand is highly concentrated in relatively few wire centers that are subject to the most intense competition. Ninety-three percent of Bell Atlantic's special access demand is located in only 20 percent of its wire centers, while more than 40% of Bell Atlantic's wire centers have no special access demand at all. And, as noted, at least 82% of the market in each of the jurisdictions already can be served by competitors using their current networks.

As a result, when large businesses and interexchange carriers ask for competitive bids, they can leverage their buying power in dense metropolitan areas to obtain similar discounts in rural areas, where competition may be less intense. ***See*** Attachment B, ¶¶ 12-13; Attachment C, ¶¶13-14. Interexchange carriers and resellers aggregate demand from individual end users and take advantage of their volume purchasing power to discipline Bell Atlantic's prices for even the smallest business customers. ***See*** Attachment B, ¶ 22. In addition, Bell Atlantic's obligation under section 201 and the Commission's rules to allow resale of its special access services means that a competitor can win a bid by reselling individual Bell Atlantic facilities to serve any of a customer's locations that are not on the competitor's network. These factors discipline Bell Atlantic's rates throughout the state.

For these reasons, Bell Atlantic meets the first criterion for forbearance under Section 10. Regulation of Bell Atlantic's special access rates in these jurisdictions is not necessary to ensure that Bell Atlantic's rates are just and reasonable. If Bell Atlantic tried to charge above-market rates, it would only accelerate Bell Atlantic's loss of market share. Lower prices are the primary motivation for customers to seek out alternatives to Bell Atlantic's special access services. Because of the high degree of demand elasticity and supply elasticity in this market, Bell Atlantic cannot impose unreasonable prices on its customers.

Nor can Bell Atlantic unreasonably or unjustly discriminate against any customer. Any customer that is dissatisfied with Bell Atlantic's rates or practices can seek, and obtain, alternative services. For this reason, any effort by Bell Atlantic to discriminate unreasonably against any customer would be self-defeating, and futile.

If the Commission removed price cap controls from Bell Atlantic's rates, Bell Atlantic's tariffs would still be subject to Sections 201 and 202 of the Act. Any customer could file a complaint under Section 208 to determine if Bell Atlantic's rates were unreasonable or unjustly discriminatory. ***See*** Hyperion Telecommunications, Inc., Petition Requesting Forbearance, 12 FCC Rcd 8596, 8609 (1997). This safeguard against the possibility, however remote, that Bell Atlantic could impose unlawful rates is a further reason why rate regulation is unnecessary.

B. Enforcement Of Rate Regulations Is Not Necessary For Protection Of Consumers

Under the second statutory criterion, the Commission must determine whether enforcement of rate regulation for special access services is necessary for the protection of consumers. 47 U.S.C. § 160(a)(2). As is explained above, rate regulation is not necessary to ensure that rates are just and reasonable. For the same reasons, rate regulation is not necessary to protect consumers who purchase these services. ***See*** Hyperion Telecommunications, Inc., Petition Requesting Forbearance, 12 FCC Rcd 8596, 8609-10 (1997) (finding that because tariffing of competitive access providers is not necessary to assure that rates are not just and reasonable, it is also not necessary to protect customers). Consumers do not need protection in a market, such as the market for special access services, that is subject to the discipline of a competitive marketplace. Competition will ensure that consumers receive the best possible service at the best possible price.

Business customers and interexchange carriers, who are the primary "consumers" of these services, are highly sophisticated customers with extensive knowledge of the industry and strong bargaining leverage. Both types of customers usually have telecommunications managers who use their expertise to get the best possible package of services, using competitive bidding practices to play one supplier against the other. Such well-informed customers do not need help in negotiating the best deal. Indeed, these customers find that the Commission's pricing rules prevent them from obtaining the best possible prices from Bell Atlantic and from competing bidders. ***See*** Attachment B, ¶ 23.

Clearly, such "consumers" do not need the protection of the Commission's rate regulations.

C. Forbearance From Rate Regulation Is Consistent With The Public Interest.

The third statutory test is whether forbearance from regulation of Bell Atlantic's special access rates is consistent with the public interest. 47 U.S.C. § 160(a)(3). In making this determination, the Commission shall consider whether forbearance will promote competitive market conditions and enhance competition among providers of telecommunications services. 47 U.S.C. § 160(b). Clearly, in this case, the answer is yes.

Forbearance from rate regulation is consistent with the public interest, because it will allow greater price competition among all providers of special access services. ***See*** Attachment C, ¶¶ 49, 52. The Commission's current rules force Bell Atlantic to maintain a "price umbrella" that allows competitors to gain customers by offering prices just below Bell Atlantic's tariffed rates, but not as low as they would offer if Bell Atlantic could tailor its rates to compete for the business of each individual customer. ***See*** Attachment B, ¶ 23. Furthermore, Bell Atlantic's obligation to file rate changes on at least 7 days' notice provides competitors with advance notice of any pricing changes and frees them from the uncertainty that Bell Atlantic might offer a better price to a customer than currently is included in its published tariffs. The end result is that customers are denied the benefit of truly vigorous price competition. A customer may end up choosing a less efficient carrier simply because Bell Atlantic is prevented from making its best offer to customers. This results in wasted resources, inefficient production, reduced competition, and economic welfare losses. ***See*** Attachment C, ¶ 49. Not only does the customer miss out on the reduced prices Bell Atlantic might offer it, but competitors are not pushed to offer their own best price in response. As one frustrated customer explained, "[i]f Bell Atlantic were allowed to compete, I suspect we'd see deeper price discounting." Attachment B at ¶ 23 (quoting the Director of Telecommunications Planning and System Design at Marriott International, Inc.).

Forbearance would enhance competition by allowing all carriers, including Bell Atlantic, to make rapid, efficient responses to changes in the market. ***See*** <u>IXC Forbearance Order</u>, at 20761. It would enable customers to seek out and obtain service arrangements that are tailored to their needs, and at truly competitive prices. ***See*** Attachment C, ¶¶ 49-51. Such intense competition, which is the goal of the Telecommunications Act of 1996, clearly is in the public interest.

III. Conclusion

Bell Atlantic's request for forbearance should be granted.

Respectfully submitted,

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January 20, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 1999, an original and 12 copies of the foregoing "Petition of Bell Atlantic for Forbearance" was served upon the Secretary and a copy was sent by first class mail, postage prepaid, to the parties on the attached list.

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